

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FRANK STEPHENS,

Defendant-Appellee.

UNPUBLISHED

September 20, 2007

No. 271046

Oakland Circuit Court

LC No. 2006-207850-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

The prosecutor appeals by right from an order granting defendant's motion to quash and dismissing a charge of second-degree criminal sexual conduct, MCL 750.520c(1)(a). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"A circuit court's ruling regarding a motion to quash an information and the district court's decision to bind over a defendant are reviewed to determine whether the district court abused its discretion in making its decision." *People v Hill*, 269 Mich App 505, 513-514; 715 NW2d 301 (2006). In reviewing the district court's decision, "the circuit court is limited to the entire record of the preliminary examination and may not substitute its judgment for that of the district court." *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). The circuit court may reverse the district court's decision only for an abuse of discretion. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). An abuse of discretion occurs when the court's decision results in an outcome falling outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

This Court's review of the circuit court's analysis of the bindover process is de novo. This Court must redetermine if the magistrate committed an abuse of discretion in finding probable cause to believe that the defendant committed the offenses charged. There must be evidence of each element of the crime charged or evidence from which the elements can be inferred, but the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994). "If the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for resolution of the issue by the trier of fact." *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995).

Defendant argued, and the circuit court agreed, that admission of defendant's statement violated the *corpus delicti* rule and, absent his statement, the evidence was insufficient to

establish that a crime was committed. The *corpus delicti* rule “concerns the admissibility of evidence rather than its sufficiency.” *People v Konrad*, 449 Mich 263, 269; 536 NW2d 517 (1995). Here, defendant waived any right to claim error in the admission of his statement when he unconditionally stipulated to its admission at the preliminary examination. See *People v Carter*, 462 Mich 206, 219-220; 612 NW2d 144 (2000). That aside, the evidence apart from defendant’s statement was sufficient to create probable cause to believe that defendant committed the crime charged.

A person commits second-degree criminal sexual conduct if he engages in sexual contact with another person who is under the age of 13. MCL 750.520c(1)(a). Sexual contact is defined as the intentional touching of the victim’s or the defendant’s “intimate parts” or the clothing covering those parts if such touching “can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for revenge, out of anger, or to inflict humiliation.” MCL 750.520a(o). The term “intimate parts” includes the groin and buttocks. MCL 750.520a(d).

The evidence showed that defendant sat the victim, a 15-month-old baby, on his pelvic area, intentionally causing contact between the baby’s diapered buttocks and his clothed groin. Second-degree CSC does not require proof that the defendant specifically intended sexual arousal or gratification when he touched the victim. *People v Piper*, 223 Mich App 642, 646-647; 567 NW2d 483 (1997). It is sufficient that the defendant’s conduct, when viewed objectively, could reasonably be construed as being for such a purpose. *Id.* at 647. Defendant kept and repositioned the baby on his groin after the baby’s mother had told him it was time to leave the house, and was then observed with an erection. With these facts one could reasonably infer that defendant acted for the purpose of sexual arousal. Therefore, the evidence apart from defendant’s statement was sufficient to establish probable cause that defendant had committed the crime charged. Consequently, the district court did not abuse its discretion in binding defendant over for trial and the trial court erred in concluding otherwise.

We reverse and remand for reinstatement of the charge. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder